

### **REMARKS**

In response to the Final Office Action dated June 22, 2010, Applicant respectfully requests reconsideration. Applicant has not amended the claims. Claims 1, 3–11, 13–22, 24–29, 31–36, 38–43 and 45–47 remain pending.

### **Withdrawal of Finality of the Office Action**

Applicant respectfully requests withdrawal of the finality of the Office Action because certain claims have not been rejected or indicated as allowable in the Final Office Action dated June 22, 2010. In particular, the Final Office Action Summary Sheet and the Final Office Action itself do not address claims 45–47, which were added in the previous response submitted by Applicant on March 18, 2010 in response to the Non-Final Office Action dated December 22, 2009. Accordingly, Applicant respectfully requests withdrawal of the Finality of the most recent Office Action, and that claims 45–47 be addressed in a subsequent action.

### **Preliminary Comments**

In the Office Action Summary Sheet, the Examiner indicated that the Final Office Action was responsive to a communication filed on April 13, 2010. Applicant believes that this comment may have been made in error as Applicant did not file any communication with respect to the instant application on April 13, 2010. The most recent response filed by Applicant was on March 18, 2010. Accordingly, Applicant respectfully requests clarification regarding this issue.

In the Response to Arguments section, the Examiner indicated that “Applicant’s arguments filed 10-17-2008 have been fully considered but they are not persuasive.” Applicant believes that this comment may have been made in error as Applicant did not file any communication with respect to the instant application on October 17, 2008. The most recent arguments filed by Applicant were filed on March 18, 2010. Accordingly, Applicant respectfully requests clarification as to the status of the arguments filed by Applicant on March 18, 2010.

### **Claim Rejection Under 35 U.S.C. § 103**

In the Final Office Action, the Examiner rejected claims 1, 3, 4, 7–11, 13, 16–19, 22, 24, 25, 28, 29, 31–36, 38–41 and 43 under 35 U.S.C. 103(a) as being obvious by Ruefer (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (2004/0122294) and Duffin et al. (U.S. Patent No.

6,292,698). The Examiner also rejected claims 5, 6, 14, 15, 26 and 27 under 35 U.S.C. 103(a) as being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and Hwang (U.S. Patent No. 5,920,271). In addition, the Examiner rejected claims 20, 21 and 42 under 35 U.S.C. 103(a) as being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and Webb et al. (U.S. Patent No. 7,060,031).

Applicant respectfully traverses these rejections. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested an apparent reason to arrive at the claimed inventions.

***Claims 1, 3-7, 17-22, 24-29, 31 and 32***

Claim 1 recites a method comprising receiving events at a prioritization engine from one or more remote monitors, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients. Claim 1 further recites prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization.

Applicant respectfully submits that the applied references fail to disclose all of the requirements of Applicant's claim 1. As one example, the applied references fail to disclose or suggest *"prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization,"* as recited in Applicant's claim 1.

More specifically, each of the applied references fails to disclose *"prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization,"* as recited in Applicant's claim 1. Moreover, the Examiner's proposed combination of references also does not appear to include these features. Accordingly, the Final Office Action fails to establish a prima facie case of obviousness with respect to Applicant's claim 1.

In support of the rejection, the Examiner cited column 1, lines 44-48 and 65-67; column 2, lines 1-9 and 10-25; and column 3, lines 33-36 of Rueter, and indicated that the cited portions

of Rueter disclose “with the prioritization engine, the received events.” Applicant believes that the Examiner intended to assert that the cited portions of Rueter disclose “prioritizing, with the prioritization engine, the received events” (emphasis added). If this is the case, then Applicant respectfully disagrees with the Examiner’s interpretation of Rueter with respect to Applicant’s claim 1 for at least the following reasons.

The Examiner indicated, in support of the rejection, that Rueter does not teach “receiving the events from a remote monitor.”<sup>1</sup> Therefore, the Examiner appears to have acknowledged that Rueter fails to disclose “receiving events at a prioritization engine from one or more remote monitors,” as recited in Applicant’s claim 1.

Because Rueter does not disclose “receiving events at a prioritization engine from one or more remote monitors,” as recited in Applicant’s claim 1, Rueter also does not disclose any limitation of Applicant’s claim 1 that relates back to the “received events.” For example, Rueter does not disclose “prioritizing, with the prioritization engine, the received events,” as recited in Applicant’s claim 1 (emphasis added).

Thus, contrary to the Examiner’s position, Rueter does not teach “prioritizing, with the prioritization engine, the received events,” as recited in Applicant’s claim 1. Because the rejection of Applicant’s claim 1 appears to have relied upon Rueter as teaching this feature of Applicant’s claim 1, the rejection should be withdrawn.

Alternatively, in support of the rejection, it appears that the Examiner may have acknowledged that Rueter fails to disclose “prioritizing, with the prioritization engine, the received events,” as recited in Applicant’s claim 1. If this is the case, then Applicant respectfully submits that the Examiner’s proposed combination also does not include “prioritizing, with the prioritization engine, the received events,” as recited in Applicant’s claim 1.

The cited portions of Rueter describe an implantable device that includes a CPU that “determines whether the new event is . . . more important than a previously stored event.”<sup>2</sup> It appears that the Examiner may have interpreted the CPU in Rueter as a prioritization engine, and the determination of whether a new event is more important than a previously stored event made by the CPU in Rueter as disclosing prioritizing, with a prioritization engine, events that are not received in the manner specified by Applicant’s claim 1. Applicant does not necessarily

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<sup>1</sup> Final Office Action, pg. 3, section 4, second paragraph.

<sup>2</sup> Rueter, col. 2, lines 4–6.

acquiesce in such an interpretation of Rueter, but even under such an interpretation, the Examiner's proposed combination still fails to include "prioritizing, with the prioritization engine, the received events," as recited in Applicant's claim 1 for at least the following reasons.

First, the Examiner's proposed combination mentions nothing about modifying the CPU in Rueter such that the new events and previously stored events in Rueter are received in manner specified by Applicant's claim 1, namely, from one or more remote monitors satisfying the requirements of Applicant's claim 1. If the CPU in Rueter is not modified such that the new events and previously stored events in Rueter are received in the manner specified by Applicant's claim 1, then the Examiner's proposed combination does not include prioritizing, with a prioritization engine, events that are received in the manner specified by Applicant's claim 1. Consequently, the Examiner's proposed combination fails to include "prioritizing, with the prioritization engine, the received events" as recited in Applicant's claim 1.

Second, the CPU in Rueter is not located external to the patient. Rather the CPU in Rueter is contained within the implantable device.<sup>3</sup> The Examiner's proposed combination mentions nothing about modifying the CPU in Rueter such that it is external to the patient in which it is implanted. Accordingly, the Examiner's proposed combination fails to include "prioritizing, with the prioritization engine, the received events" and "wherein the prioritization engine and the one or more remote monitors are both external to the patients," as recited in Applicant's claim 1.

Because the Examiner's proposed combination does not include "prioritizing, with the prioritization engine, the received events," as recited in Applicant's claim 1, the Examiner's proposed combination also does not include any limitation of Applicant's claim 1 that relates back to such a "prioritization." For example, Rueter also does not disclose "presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Applicant's claim 1 (emphasis added).

Notwithstanding the deficiencies already discussed above with respect to the Examiner's rejection and proposed combination, Applicant also notes that the Examiner's proposed combination fails to include all of the limitations recited in Applicant's claim 1 for at least the following additional reasons. In support of the rejection of Applicant's claim 1, the Examiner acknowledged that Rueter in view of Hatlestad et al. fails to teach "prioritizing events obtained

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<sup>3</sup> Rueter, col. 1, lines

from a plurality of medical devices implanted in different patients; and presenting a list of the patients and a list of the events for each of the patients based on the prioritization.” Therefore, the Examiner appears to have acknowledged that Rueter in view of Hatlestad et al. fails to disclose “prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization,” as recited in Applicant’s claim 1. In order to overcome this deficiency in Rueter in view of Hatlestad et al., the Examiner turned to Duffin et al.

However, Duffin et al. also fails to disclose “prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization,” as recited in Applicant’s claim 1. Duffin et al. makes no mention of prioritization of received events. Therefore, Duffin et al. fails to overcome the deficiencies already acknowledged by the Examiner with respect to Rueter in view of Hatlestad et al.

If the teachings of a first set of references (i.e., Rueter in view Hatlestad et al.) and of a second set of references (i.e., Duffin et al.) each fail to disclose one or more features of Applicant’s claim 1, then the combination of the teachings cannot teach these features without at least one of the references being modified to include such features. However, the Examiner’s proposed combination mentions nothing about modifying any of the references to include “prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization,” as recited in Applicant’s claim 1. Because these features were not taught individually within the references, any combination of the references that does not involve a modification of the references to include these features cannot produce the invention defined by Applicant’s claim 1.

If the Examiner’s proposed combination does not produce a method or device that includes all of the features of Applicant’s claim 1, then any assertion that the Examiner’s proposed combination would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention is not sufficient for establishing that the invention defined by Applicant’s claim 1 would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention. For at least the reasons discussed above, the Examiner’s proposed combination does

not include all of the features of Applicant's claim 1. Accordingly, the Examiner has not established a prima facie case of obviousness with respect to Applicant's claim 1.

In the "Response to Arguments" section of the Final Office Action, the Examiner cited column 2, lines 10–17 and stated that "the implantable device [in Rueter] will receive data on clinically significant events/received events." The cited portion of Rueter describes that a "physician or clinician . . . will receive data on clinically significant events that have occurred since the last interface." Such a description cannot be reasonably interpreted as "the implantable device" of Rueter receiving the data on clinically significant events, as suggested by the Examiner.

Also in the "Response to Arguments" section of the Final Office Action, the Examiner cited column 5, lines 65–67 to column 6, lines 1–16 of Rueter, paragraph [103] of Hatlestad et al., and column 14, lines 25–29 of Duffin et al. The cited portion of Rueter refers to a microprocessor contained within an implantable device that "determine[s] a priority value for the lead impedance data."<sup>4</sup> The cited portion of Hatlestad et al. describes an IMD for "for acquiring, trending and displaying multiple health-related parameters."<sup>5</sup> The cited portion of Duffin et al. describes a Global Communications and Monitoring System (GCMS) that provides "data collection at one central site from all study patients."<sup>6</sup> None of these teachings appears to disclose "prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Applicant's claim 1. Accordingly, the cited portions of the applied references in the "Response to Arguments" section of the Final Office Action fail to overcome the above-mentioned deficiencies in the rejection.

Independent claims 17 and 29 recite limitations that are similar to those discussed above with respect to independent claim 1. For example, independent claim 17 recites "a prioritization engine to receive events from one or more remote monitors, and to prioritize the received events, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors

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<sup>4</sup> Rueter, col. 5, lines 58–67.

<sup>5</sup> Hatlestad et al., paragraph [0103].

<sup>6</sup> Duffin et al., col. 14, lines 25–29.

are both external to the patients; and a user interface device to present a list of the patients and a list of the events for each of the patients based on the prioritization.”

As another example, independent claim 29 recites “instructions for causing a programmable processor to . . . receive events from a plurality of remote monitors, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the programmable processor and the remote monitors are both external to the patients; prioritize the received events; and present a list of the patients and a list of the events for each of the patients based on the prioritization.”

The rejection of independent claims 17 and 29 appears to have relied upon the same rationale as that which was discussed above with respect to independent claim 1. Therefore, Applicant submits that the Examiner has not established a prima facie case of obviousness with respect to claims 17 and 29 for at least reasons similar to those described above with respect to independent claim 1.

Claims 3–7, 18–22, 24–28, 31 and 32 depend either directly or indirectly from independent claims 1, 17 and 29. The rejection of these dependent claims incorporated the rationale relied upon for the rejection of independent claims 1, 17 and 29. Moreover, Hwang and Webb et al. each fail to overcome the deficiencies already discussed above with respect to Rueter in view of Hatlestad et al. and Duffin et al. Therefore, the Examiner has not established a prima facie of obviousness with respect to dependent claims 3–7, 18–22, 24–28, 31 and 32 for at least the reasons described above with respect to claims 1, 17 and 29. In light of the deficiencies described with respect to the rejection of the independent claims, Applicant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Office Action’s interpretation of, or application of art to, such claims.

For at least these reasons, the Examiner has failed to establish a prima facie case of obviousness under 35 U.S.C. § 103(a) with respect to Applicant’s claims 1, 3–7, 17–22, 24–29, 31 and 32. Withdrawal of this rejection is respectfully requested.

***Claims 8–11, 13–16, 33–36 and 38***

Claim 8 recites a method comprising interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data; receiving, with a

prioritization engine, the event data from the one or more remote monitors, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event, and wherein the prioritization engine is external to the patients; and assigning, with the prioritization engine, a relative importance to each of the events described by the received event data.

The applied references fail to disclose or suggest “receiving, with a prioritization engine, the event data from the one or more remote monitors, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event, and wherein the prioritization engine is external to the patients; and assigning, with the prioritization engine, a relative importance to each of the events described by the received event data,” as recited in claim 8. Moreover, the Examiner’s proposed combination does not appear to produce a method or a device for performing the same that includes all of the features recited in claim 8. Accordingly, Applicant submits that the Examiner has not established a prima facie case of obviousness with respect to Applicant’s claim 8.

Independent claim 33 recites limitations that are similar to those discussed above with respect to claim 8. For example, independent claim 33 recites “instructions for causing a programmable processor to . . . receive event data from one or more remote monitors, wherein the one or more remote monitors interrogate a plurality of medical devices implanted in different patients to obtain the event data, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event; and assign a relative importance to each event described by the received event data, wherein the programmable processor is external to the patients.” The rejection of independent claim 33 appears to have relied upon the same rationale as that which was discussed above with respect to independent claim 8. Therefore, Applicant submits that the Examiner has not established a prima facie case of obviousness with respect to claim 33 for at least reasons similar to those described above with respect to independent claim 8.

Claims 9–11, 13–16, 34–36 and 38 depend either directly or indirectly from independent claims 8 and 33. The rejection of these dependent claims incorporated the rationale relied upon for the rejection of independent claims 8 and 33. Moreover, Hwang does not overcome the deficiencies already discussed above with respect to Rueter in view of Hatlestad et al. and Duffin et al. Therefore, the Examiner has not established a prima facie of obviousness with respect to



dependent claims 9–11, 13–16, 34–36 and 38 for at least the reasons described above with respect to claims 8 and 33. In light of the deficiencies described with respect to the rejection of the independent claims, Applicant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Office Action's interpretation of, or application of art to, such claims.

For at least these reasons, the Examiner has failed to establish a prima facie case of obviousness under 35 U.S.C. § 103(a) with respect to Applicant's claims 8–11, 13–16, 33–36 and 38. Withdrawal of this rejection is respectfully requested.

#### ***Claims 39–43***

Claim 39 recites a device comprising a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient; and a database to store the prioritized events.

Applicant submits that the applied references fail to disclose all of the requirements of Applicant's claim 39. As one example, the applied references fail to disclose or suggest “a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient,” as recited in Applicant's claim 39.

Applicant's claim 39 recites “a prioritization engine . . . to prioritize the received events.” The “received events” recited in Applicant's claim 39 relate back to the “events” received “from a plurality of remote monitors” recited in claim 39. Each of the “remote monitors” recited in Applicant's claim 39 “obtains the events from interrogation of a medical device implanted within a different patient.” Thus, the “received events” recited in Applicant's claim 39 relate back to events that are obtained from a plurality of medical devices implanted in different patients.

In support of the rejection of Applicant's claim 39, the Examiner acknowledged that Rueter in view of Hatlestad et al. fails to teach “prioritizing events obtained from a plurality of

medical devices implanted in different patients; and presenting a list of the patients and a list of the events for each of the patients based on the prioritization.” Therefore, the Examiner appears to have acknowledged that Rueter in view of Hatlestad et al. fails to disclose “a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient,” as recited in Applicant’s claim 39. In order to overcome this deficiency in Rueter in view of Hatlestad et al., the Examiner turned to Duffin et al.

However, Duffin et al. also fails to disclose “a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient,” as recited in Applicant’s claim 39. Duffin et al. makes no mention of a prioritization engine to prioritize received events. Therefore, Duffin et al. fails to overcome the deficiencies already acknowledged by the Examiner with respect to Rueter in view of Hatlestad et al.

The Examiner appears to have asserted that it would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention to combine the teachings of Rueter in view of Hatlestad et al. and the teachings of Duffin et al. to arrive at the invention defined by Applicant’s claim 39. Applicant respectfully disagrees. The Examiner’s proposed combination does not appear to produce a device that includes a “a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient.” Accordingly, the Examiner has not established a prima facie case of obviousness with respect to Applicant’s claim 39.

Claims 40– 43 depend from independent claim 39 and incorporate all of the limitations of independent claim 39. The rejection of these dependent claims incorporated the rationale relied upon for the rejection of independent claim 39. Moreover, Webb et al. does not overcome the

deficiencies already discussed above with respect to Rueter in view of Hatlestad et al. and Duffin et al. Therefore, the Examiner has not established a prima facie of obviousness with respect to dependent claims 40, 41 and 43 for at least the reasons described above with respect to claim 8. In light of the deficiencies described with respect to the rejection of the independent claims, Applicant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Office Action's interpretation of, or application of art to, such claims.

For at least these reasons, the Examiner has failed to establish a prima facie case of obviousness under 35 U.S.C. § 103(a) with respect to Applicant's claims 39-43. Withdrawal of this rejection is respectfully requested.

### CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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